IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

Bail Appl..No. 6700 of 2007()

(CRIME NO.540/07 OF TANUR POLICE STATION)

PETITIONERS/ACCUSED:

1. **NOUSHAD, S/O.LATE YOUSUFF,**
   KUNNUMMAL HOUSE, PANANGATTUR P.O., TANUR.

2. **ABDUL RAZACK, S/O.YAHUTTY,**
   MATHUKAYIL HOUSE, PENANGATTU P.O.,
   TANUR.

3. **NISSAR.M., S/O.MOHAMMEDKUTTY,**
   MATHUKAYIL HOUSE, PANANGATTUR P.O.,
   TANUL.

4. **HAMZU, S/O.HUSSANKUTTY,**
   MATHUKAYIL HOUSE, PENANGATTUR P.O.,
   TANUL.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT/STATE:

1. **THE SUB INSPECTOR OF POLICE,**
   TANUR POLICE STATION.

2. **STATE REP. BY PUBLIC PROSECUTOR,**
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

= = = = = = = = = = = = = =

B.A.No. 6700 of 2007

= = = = = = = = = = = = = =

Dated this the 13th day of November, 2007

ORDER

Application for anticipatory bail. Petitioners are accused 1 to 4. They face allegations under Section 377 IPC in a crime registered on 16.10.07. The F.I. Statement was lodged by the victim four days after the alleged incident took place on 12.10.07. The 1st accused had unnatural sexual intercourse against the order of nature with him on that night. He was threatened. He was afraid that he may be subjected to such ordeal action by the accused. He hence reported the matter to his elder brother. He alleged that, not only the 1st accused on 12.10.07, the other accused had already indulged in such sexual intercourse with him on earlier occasions. Crime has been registered. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. There is delay of four days in filing the complaint against the accused. Even the dates of the earlier offences are not mentioned clearly and no such complaints are raised earlier by the de facto complainant,

submits the learned counsel for the petitioners. In these circumstances, anticipatory bail may be granted to the petitioners, prays the learned counsel for the petitioners.

3. The learned Public Prosecutor opposes the application. I have perused the case diary, I find merit in the opposition by the learned Public Prosecutor. The question is not whether the 4 accused can be compelled to face the indictment in the same proceedings. The question is not whether there has been delay in lodging the complaint by the victim aged 12 years against the petitioners. I am not able to perceive any features in this case suggesting the need for invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This is a fit case where the petitioners must appear before the learned Magistrate and seek regular bail in the ordinary and normal course.

4. In the result, this petition is dismissed. Needless to say, if the petitioners surrender before the investigating officer or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

sj